

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO.: 3:16-CV-00622-CWR-FKB

THE STATE OF MISSISSIPPI

DEFENDANT

**MEMORANDUM IN SUPPORT OF DEFENDANT STATE
OF MISSISSIPPI'S MOTION FOR EXTENSION OF
CASE MANAGEMENT DEADLINES AND TRIAL DATE**

Introduction

The discovery deadline in this case is set for October 30, 2018.¹ On August 20, 2018, the State filed a Motion to compel Rule 30(b)(6) Deposition of Plaintiff.² On August 21, 2018, the State filed a Motion to Compel Dr. Elinore McCance-Katz.³ Because these motions were filed well within the discovery period, the State should be permitted to take these depositions even if doing so requires an extension of the discovery deadlines and trial.

I. The State Should Be Granted An Extension of Case Management Deadlines and Trial Date.

Fed. R. Civ. Pro. 16(b)(4) provides that a scheduling order may be modified “only for good cause and with the judge’s consent.” “Good Cause” is established by showing “that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.” *Squyres v. Heico Companies, L.L.C.*, 782 F.3d 224, 237 (5th Cir. 2015). When considering whether a party has shown good cause to modify or extend a scheduling order, Fifth Circuit precedent establishes a four-part test: “(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the

¹ Dkt. 39, Case Management Order, ¶7(C).

² Dkt. 92, Motion to Compel Rule 30(b)(6) Deposition of Plaintiff.

³ Dkt. 94, Motion to Compel Deposition of Dr. Elinore McCance-Katz.

amendment; and (4) the availability of a continuance to cure such prejudice.” *Meaux Surface Prot., Inc. v. Fogleman*, 607 F.3d 161, 167 (5th Cir. 2010).

Applying these factors, an extension of the case management deadlines and trial date is warranted. The State has acted diligently in its efforts to schedule the 30(b)(6) deposition and deposition of Dr. McCance-Katz. However, because of the refusal of Plaintiff to allow these depositions, the State has been forced to file motions to compel, which may not be ruled on before the current discovery deadline of October 30, 2018. Furthermore, the State will suffer great prejudice if its not allowed an extension of the discovery dead line to take the 30(b)(6) deposition and deposition of Dr. McCance-Katz because both depositions will provide facts essential to the State’s case.

Additionally, an extension is a recognized remedy when a party has been diligent in their efforts to depose an opposing party witness and filed a motion to compel deposition. *Hernandez v. Mario’s Auto Sales, Inc.*, 617 F.Supp.2d 488, 493-94 (S.D. Texas 2009). Moreover, in deciding whether to grant an extension, the Court’s “judgment range is exceedingly wide,” for it “must consider not only the facts of the particular case but also all of the demands on counsel’s time and the court’s.” *Streber v. Hunter*, 221 F.3d 701, 736 (5th Cir. 2000). The Court should exercise its broad discretion and grant an extension of the case management deadlines and trial dates as necessary to allow the State to complete discovery.

Relief Requested

For these reasons, Defendant’s Motion for Extension of Case Management Deadlines and Trial Date should be granted.

This, the 22nd day of August, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 22, 2018, I electronically filed this document with the Clerk of the Court using the ECF system, which sent notification of such filing to all ECF counsel of record in this action.

/s/ Nash E. Gilmore

NASH E. GILMORE